

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LESTER NELSON LUTZ, : 1:09-CV-1510  
Petitioner : (Judge McClure)  
v. : (Magistrate Judge Carlson)  
DAVID A. VARANO, ET AL., :  
Respondents :

**M E M O R A N D U M**

April 23, 2010

**BACKGROUND:**

On August 7, 2009, Lester Nelson Lutz filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging his conviction in the Court of Common Pleas of Lackawanna County, Pennsylvania, on the basis of a guilty plea to two counts of deviate sexual intercourse, resulting in a sentence of two consecutive five-to-ten year sentences.

On October 14, 2009, Lutz filed his notice of election choosing to have the court rule on the petition as filed.

On March 26, 2010, the court referred the case to United States Magistrate Judge Martin C. Carlson for his review and preparation of a report and recommendation.

On March 29, 2010, Magistrate Judge Carlson filed his report and recommendation, recommending that the petition be denied as time-barred and that a certificate of appealability should not issue. No objections have been filed to the report and recommendation.

As has been explained in detail in Magistrate Judge Carlson's thorough 17-page report and recommendation, Lutz's petition is clearly barred by the one-year statute of limitations set forth in 28 U.S.C. § 2244(d) and there is no basis for the tolling of the limitations period.

As petitioner has not made a substantial showing of the denial of a constitutional right, there is no basis for the issuance of a certificate of appealability.

The report and recommendation of Magistrate Judge Carlson will be adopted and approved and the petition dismissed.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge

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**ORDER**  
April 23, 2010

For the reasons set forth in the accompanying Memorandum,

**IT IS ORDERED THAT:**

1. The report and recommendation of United States Magistrate Judge Martin C. Carlson (Rec. Doc. No. 20, filed March 29, 2010) is approved and adopted in full for the reasons set forth therein.
2. The petition for a writ of habeas corpus is dismissed, as time-barred.
3. There is no basis for the issuance of a certificate of appealability.
4. The clerk is directed to close the case file.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge